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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,452	11/19/2003	Tsutomu Ando	00862.023308.	3929

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FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER
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TEKLE, DANIEL T

ART UNIT	PAPER NUMBER
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2621

MAIL DATE	DELIVERY MODE
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07/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/715,452	Applicant(s) ANDO, TSUTOMU	
	Examiner Daniel Tekle	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/10/04; 07/08/04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A **“computer readable program”** not claimed as **“embodied in and executed by a computer-readable medium”** is descriptive material per se and is not statutory because it is not capable of causing functional change in the computer. Such claimed data structures do not define any structural and functional interrelationships with the other claimed aspects of the invention, which permit the data structure’s functionality to be realized. In contrast, a claimed **“ computer readable medium encoded with a computer program when executed comprising”** defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the functionality to be realized, and is thus statutory.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamane et al (US 6,393,196).

**Regarding Claim 1:** Yamane et al. disclose an image data recording apparatus comprising: coding means for encoding image data using a buffer memory (**column 6 lines 19-29**); buffer occupation amount detection means for, upon coding by coding means, detecting a code amount of image data occupying buffer memory, and outputting buffer information related to the detected code amount of image data (**columns 6-7, lines 48-5**); and recording means for recording coded image data and buffer information on a recording medium (**column 9 lines 1-7**).

**Regarding Claim 2:** Yamane et al. disclose an image data recording apparatus according to claim 1, wherein buffer occupation amount detection means outputs buffer information for every recording unit of coded image data (**columns 14-15, lines 63-3**).

**Regarding Claim 3:** Yamane et al. disclose an image data recording apparatus according to claim 2, further comprising error correction processing means for performing error-correction coding processing on coded image data, wherein recording means performs interleave processing by a plurality of error correction blocks and performs recording, and wherein buffer occupation amount detection means outputs buffer information by plurality of error correction blocks for interleave processing (**column 50 lines 27-34 and figure 46**).

**Regarding Claim 4:** Yamane et al. disclose an image data recording apparatus according to claim 1, wherein coding means encodes image data by MPEG coding, with buffer information as a value of a VBV (Video Buffer Verifier) (**column 23 lines 10-18**).

**Regarding Claim 5:** Yamane et al. disclose an image data recording apparatus according to claim 3, wherein coding means encodes image data by MPEG coding, and wherein buffer occupation amount detection means outputs buffer information by GOP (Group Of Pictures) (**column 27 lines 1-25**).

**Regarding Claim 6:** Yamane et al. disclose an image data recording apparatus according to claim 1, wherein recording means records coded image data and buffer information in plural tracks formed on a tape type recording medium, such that buffer information is recorded in a predetermined area of plural tracks (**column 52 lines 32-45**).

**Regarding Claim 7:** Yamane et al. disclose an image data recording apparatus according to claim 1, wherein coding means encodes image data by intra-frame coding and inter-frame prediction coding (**column 26 lines 27-40**).

**Regarding Claim 8:** Yamane et al. disclose an image data recording apparatus according to claim 1, wherein coding means controls the code amount of image data based on buffer information (**columns 6-7, lines 48-5**).

**Regarding Claim 9:** Yamane et al. disclose an image, data recording apparatus which records new image data, encoded by intra-frame coding and inter-frame prediction coding, on a tape type recording medium on which coded image data is already recorded, comprising: coding means for encoding image data using a buffer memory

**(columns 6-7, lines 48-5 and column 26 lines 27-40);** buffer occupation amount detection means for, upon coding by coding means, detecting a code amount of image data occupying buffer memory, and outputting buffer information related to the detected code amount of image data **(columns 6-7, lines 48-5);** and recording means for recording coded image data and buffer information on tape type recording medium **(columns 6-7, lines 48-5).**

**Regarding Claim 10:** Yamane et al. disclose an image data recording apparatus according to claim 9, further comprising reproduction means for reproducing image data and buffer information from tape type recording medium, wherein coding means performs coding processing on new image data by using the buffer information reproduced by reproduction means **(column 26 lines 17-39).**

**Regarding Claim 11:** Yamane et al. disclose an image data recording apparatus according to claim 9, wherein coding means controls the code amount of new image data based on the buffer information reproduced from a position immediately before a recording start position of new image data in tape type recording medium **(column 32 lines 43-55).**

**Regarding Claims 12-13:** Claims 12-13 are rejected for the same subject matter as claims 1 and 9 respectively.

**Regarding Claims 14-15:** Claims 14-15 are rejected for the same subject matter as claims 1 and 9 respectively.

**Regarding Claims 16-17:** Claims 16-17 are rejected for the same subject matter as claims 1 and 9 respectively.

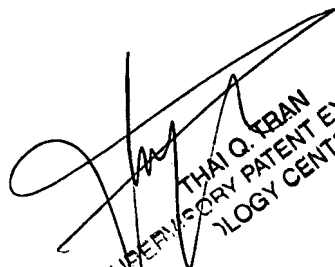
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Tekle whose telephone number is 571-270-1117. The examiner can normally be reached on 7:30am to 5:00pm M-R and 7:30-4:00 Every other F..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel Tekle

  
THAI Q. TRAN  
SUPERVISORY PATENT EXAMINER  
BIOLOGY CENTER 2600